

EVIDENCE — HEARSAY — Hearsay exceptions where availability of declarant is immaterial: "Present Sense Impression" — Revised 3/2010

Rule 803, Ariz. R. Evid., gives several categories of statements that are not excluded by the hearsay rule, whether or not the declarant -- the person who made the statement -- is available as a witness. The first of these is "present sense impression":

A statement describing or explaining an event or condition made while the declarant was perceiving the event or condition, or immediately thereafter.

In *State v. Romanosky*, 162 Ariz. 217, 782 P.2d 693 (1989), the court noted that present sense impression exception to the hearsay rule has three requirements, "an event or condition must be described or explained; there must be a perception by the declarant; [and] the statement must be made immediately after the event." *Id.* at 222, fn. 5, 782 P.2d at 698, *see also State v. Tucker*, 205 Ariz. 157, 166, 68 P.3d 110, 119 (2003).

In *State v. Wooten*, 193 Ariz. 357, 365, 972 P.2d 993, 1001 (App. 1998), the victim knew the defendant, Levonnie Wooten, as a friend's cousin. Wooten came to the victim's door, identified himself as an old friend, and asked her to let him in. The victim then called a witness, Evans, and told Evans that "Vonnie," the friend's cousin, was at the victim's apartment, "so if anything happens to me you know who was here." *Id.* at 360, 972 P.2d at 996. The State introduced evidence of the telephone call to Evans over the defense's objections. On appeal, Wooten argued that there was insufficient evidence to show that the victim could see Wooten when she made the phone call. Citing *United States v. Portsmouth Paving Corp.*, 694 F.2d 312, 323 (4th Cir.1982) [for purposes of present sense impression, "[w]e perceive events with our ears as much as with our eyes"], the Arizona Supreme Court said that the evidence showed that the victim was perceiving Wooten when she made the telephone call. The victim's purported

inability to visually identify Wooten went to the weight to be given the evidence, not to its admissibility. Similarly, in *State v. Rendon*, 148 Ariz. 524, 526, 715 P.2d 777, 779 (App. 1986), the burglary victims' next-door neighbor saw the burglary in process and, as it was taking place, called the police and described the burglary and the burglars to them. At trial, the State played a tape of the neighbor's telephone call to the police. On appeal, Rendon argued that the statement was inadmissible hearsay, but the Court of Appeals disagreed, stating that the tape was admissible as a "present sense impression." *Id.* at 528, 715 P.2d at 781.